

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, MAY 5, 2022

2022 MAY -4 P 12: 21
FIDELITY'S OFFICE
CONTROL CENTER

2022 MAY -4 P 12: 21

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. BFI-2022-00035

Ex Parte: In the Matter of Adopting
Regulations Governing Sales-Based
Financing under Chapter 22.1 of
Title 6.2 of the Code of Virginia

ORDER TO TAKE NOTICE

Chapter 516 of the 2022 Virginia Acts of Assembly amends the Code of Virginia ("Code") by adding Chapter 22.1 to Title 6.2 (§ 6.2-2228 *et seq.*) ("Chapter 22.1"). Chapter 22.1 requires, among other things, certain sales-based financing providers and sales-based financing brokers to register with the State Corporation Commission ("Commission") in accordance with procedures established by the Commission, and requires sales-based financing providers subject to Chapter 22.1 to furnish certain disclosures to recipients of sales-based financing in accordance with formatting prescribed by the Commission. Chapter 22.1 will become effective on July 1, 2022, and the deadline for registering with the Commission is November 1, 2022. Section 6.2-2237 of the Code authorizes the Commission to adopt such regulations as it deems appropriate to effect the purposes of Chapter 22.1.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed regulations pursuant to § 6.2-2237 of the Code that define certain terms, require sales-based financing providers and sales-based financing brokers to register with the Commission in accordance with procedures established by the Commissioner of Financial Institutions, and effectuate the disclosure requirements of § 6.2-2231 of the Code. The proposal also contains the disclosure form that sales-based financing providers will be required to use.

NOW THE COMMISSION, having considered the Bureau's proposal, is of the opinion and finds that reasonable notice of the proposed regulations should be given, interested parties should be afforded an opportunity to be heard in accordance with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, and the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2022.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations and disclosure form are attached hereto and made a part hereof.

(2) Comments or requests for a hearing on the proposed regulations or disclosure form must be submitted in writing to the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 6, 2022. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2022-00035. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments.

(3) The Bureau shall file its response to any comments filed pursuant to Ordering Paragraph 2 on or before June 15, 2022.

(4) This Order, along with the attached proposed regulations and disclosure form, shall be made available on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Commission's Division of Information Resources shall provide a copy of this Order, the proposed regulations, and the disclosure form to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

A COPY of this Order, including the attached proposed regulations and disclosure form, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order, along with the attached proposed regulations and disclosure form, to such interested persons as he may designate.

STATE CORPORATION COMMISSION**Chapter 240****Sales-Based Financing****10VAC5-240-10. Definitions.**

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Chapter 22.1" means Chapter 22.1 (§ 6.2-2228 et seq.) of Title 6.2 of the Code of Virginia.

"Finance charge" has the meaning assigned to it in 12 CFR 1026.4 regardless of whether a provider or sales-based financing transaction is subject to Regulation Z (12 CFR Part 1026) or the Truth in Lending Act (15 USC § 1691 et seq.).

"Registrant" means a person registered under Chapter 22.1.

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2228 of the Code of Virginia.

10VAC5-240-20. Registration; additional requirements; surrender of registration.

A. A provider or broker shall register with the commission in accordance with procedures established by the commissioner. A completed application for registration shall be accompanied by the initial registration fee prescribed in § 6.2-2230 of the Code of Virginia and any information relating to the application that the commissioner may require.

B. Every provider or broker shall (i) be organized under the laws of Virginia; or (ii) if not organized under the laws of Virginia, obtain authority to transact business in Virginia as a foreign entity in accordance with the provisions of Title 13.1 of the Code of Virginia unless such provider or broker is not required to obtain such authority. Every provider or broker, either organized under the laws of Virginia or who has obtained authority to transact business in

Virginia as a foreign entity, shall continuously remain authorized to transact business in Virginia under Title 13.1 of the Code of Virginia.

C. A registrant shall notify the bureau in writing within 10 days of any change to either its name or contact information.

D. A registrant may surrender its registration by providing written notice to the bureau along with the effective date of the surrender.

10VAC5-240-30. Sales-Based Financing Disclosure Form.

A. A provider shall furnish a completed Sales-Based Financing Disclosure Form to every recipient at the time the provider extends a specific offer of sales-based financing to the recipient. The format of the Sales-Based Financing Disclosure Form shall be prescribed by the commission.

B. If any information required by the Sales-Based Financing Disclosure Form is inapplicable, the provider shall enter "Not Applicable" or "N/A" in the space provided.

C. If any information required by the Sales-Based Financing Disclosure Form does not fit within the space provided on the first page of the form, the provider shall: (i) insert a check mark or "X" in the "SEE PAGE 2" box that appears within the applicable section of the first page, (ii) insert a check mark or "X" in each applicable box on the second page of the form, (iii) disclose the information in the large box on the second page of the form, (iv) furnish a recipient with both pages of the completed form, and (v) require the recipient to sign and date both pages of the completed form. A provider may elect to furnish a recipient with the second page of the form even though all of the required information fits on the first page provided that the provider enters "Not Applicable" or "N/A" in the large box on the second page.

D. A provider shall not give a recipient a Sales-Based Financing Disclosure Form that contains any false or misleading information. The Sales-Based Financing Disclosure Form shall

be furnished to a recipient as a separate document from any other contracts, agreements, papers, notices, or other disclosures provided to the recipient, but it may be mailed or transmitted in a package or electronic file that contains other documents. A provider shall not modify the prescribed format of the Sales-Based Financing Disclosure Form, or either append to or include within it any information that is not required by this form.

E. A provider shall require a recipient to sign and date the Sales-Based Financing Disclosure Form at the time the recipient accepts the provider's offer. A provider may obtain a recipient's electronic signature on the Sales-Based Financing Disclosure Form if the provider complies with all applicable provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia), the Electronic Signatures in Global and National Commerce Act (15 USC § 7001 et seq.), and any other applicable laws.

F. A provider shall provide a recipient with the Sales-Based Financing Disclosure Form in a format that the recipient may retain. This includes a hard copy or electronic document that the recipient can save for future reference.

G. If a recipient elects to pay off or refinance the sales-based financing prior to full repayment, a provider shall furnish the recipient with an updated and completed Sales-Based Financing Disclosure Form that contains the information as of the date that the sales-based financing is paid off or refinanced. The provider shall comply with subsections B through F of this section in connection with the updated Sales-Based Financing Disclosure Form. The provider shall require a recipient to sign and date the updated Sales-Based Financing Disclosure Form at the time the recipient pays off or refinances the sales-based financing.

10VAC5-240-40. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

FORMS (10VAC5-240)

SALES-BASED FINANCING DISCLOSURE FORM (Eff. 7/1/2022)

SALES-BASED FINANCING DISCLOSURE FORM

220510035

Disclosure Date				Recipient's Name:	
Total Amount Financed		\$		Recipient's Address:	
Fees Deducted or Withheld at Disbursement		\$			
Disbursement Amount <small>[Total Amount Financed minus (-) Fees Deducted or Withheld at Disbursement]</small>		\$		Provider's Name:	
Finance Charge		\$		Provider's Address:	
Total Repayment Amount <small>[Disbursement Amount plus (+) Finance Charge]</small>		\$		Provider's Phone Number:	
Estimated Number of Payments <small>[Number of payments expected, based on the projected sales volume, to equal the Total Repayment Amount]</small>				Provider's E-mail Address:	

Payment Schedule	<input type="checkbox"/> Amount of each fixed payment: \$ <input type="checkbox"/> Frequency of fixed payments:				
	<input type="checkbox"/> Fixed <input type="checkbox"/> Variable payment schedule, or <input type="checkbox"/> Description of the method used to calculate the amount and frequency of each variable payment: Method of payment:				
<input type="checkbox"/> SEE PAGE 2					

Description of All Other Potential Fees and Charges <u>NOT</u> Included in the Finance Charge					
<input type="checkbox"/> SEE PAGE 2					
Description of Collateral Requirements or Security Interests					
<input type="checkbox"/> SEE PAGE 2					
Broker Compensation	Is provider paying compensation directly to a broker? <input type="checkbox"/> Yes <input type="checkbox"/> No		If Yes, amount of compensation being paid directly to broker: \$		
Description of Prepayment Policies					
<input type="checkbox"/> SEE PAGE 2					

I acknowledge that I have received a copy of this disclosure form.

Signature

Date

SALES-BASED FINANCING DISCLOSURE FORM - PAGE 2

220510035

Recipient's Name:

Disclosure Date:

Recipient's Address:

Provider's Name:

The information provided below relates to the following checked item(s):

- ☐ Variable payment schedule
- ☐ Description of the method used to calculate the amount and frequency of each variable payment
- ☐ Method of payment
- ☐ Description of all other potential fees and charges not included in the finance charge
- ☐ Description of collateral requirements or security interests
- ☐ Description of prepayment policies

I acknowledge that I have received a copy of this disclosure form.

Signature

Date